SUPREME COURT U. S.
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IN THE

Supreme Court of the United States

RUTH E. BIDDLE, *Administratrix, Appellant*

v.

IDA M. BOWSER, *et al., Appellees*

PETITION FOR REHEARING ON APPEAL FROM THE SUPREME COURT OF OHIO

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OCTOBER TERM, 1967

No. 41273

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PETITION FOR REHEARING ON APPEAL FROM THE SUPREME COURT OF OHIO

To the Honorable Chief Justice, and the Associate Justice of the Supreme Court of the United States:

Comes now the petitioner and presents this petition for a rehearing on the appeal from the Supreme Court of Ohio filed in this case.

JURISDICTION

The appeal was filed on May 29, 1968, and denied on October 14, 1968. This petition for rehearing is filed within twenty-five day from October 14, 1968, in accordance with Rule 58 of this Court.

REASONS FOR PETITION FOR REHEARING

In applying for this rehearing, your petitioner reiterates

each and every ground set forth in the original petition, and further suggests to the Court the matters hereinafter discussed.

Since the filing of the appeal by Ruth Biddle, in this Court, a petition for a writ of certiorari to the Supreme Court of Pennsylvania, in a case entitled *Mary Townsend Cochran* v. *George L. Morris and Girard Trust Bank, et al.*, petition for cert. filed, 37 U.S.L.Week 3115 (U.S. August 20, 1968) (No. 422). The *Cochran* case, involving a contested will and intervivos trust, is presently before this Court for decision, on the petition of the parties who were, up to a certain time in the life of the testatrix and settlor, to wit, February 20, 1964, the legatees and beneficiaries under the successive wills and the trust instrument. However, after February 20, 1964, petitioner and her issue were virtually disinherited as she and her husband received but relatively small bequests. *Id,* Petition for Cert., Page 5.

Inherent in the resolution of the *Cochran* case, as is inherent in the instant case, is a proper evaluation of the known and the questioned signatures of the testatrix, or in the *Biddle* case, the testator, on the various instruments. When the petitioner in that case employed the use of scientific, expert handwriting testimony, the Orphans' Court of Montgomery County, Pennsylvania, (sustained by the Pennsylvania Supreme Court) held it: " - - to be entitled to little or no weight in view of direct testimony of decedent's execution thereof by witnesses found credible by the trial court." Id, at 14.

These two cases therefore present a clear indication of the inconsistent application of the rules of evidence in the States of Ohio and Pennsylvania, depending on whether the State or a private individual is the movant. Mr. Wigmore, in his treatise on evidence, succinctly states:

"It ought to be now well understood that the identification and the decipherment of documents, including hand-

writing and all other features, are the subject of scientific study, made by the aid of instruments of precision, and that modern research has elevated the whole subject into the realm of an applied science. Under such conditions, tangible reasons can be given for every opinion, precisely as an engineer can explain the reasons for constructing a bridge of a certain type. See Albert S. Osborn, *Reasons and Reasoning in Expert Testimony,* Law and Contemporary Problems: Expert Testimony, Duke University, 1935, p. 488. Such an opinion is as much more valuable that the untrained layman's opinion as that of a scientific and experienced geologist surpasses that of the empiric oil-prospector." 7 Wigmore, Evidence § 1998 (Third Edition, 1940).

Professor Wigmore, in an exhaustive survey of the use of handwriting expert testimony in the state court of the United States, concludes that the decisions and the statutes in the various jurisdictions exhibit a great variety of rules; even within the same jurisdiction, there is often obscurity and inconsistency. *Id* § 2008. In his survey, which is approached from the standpoint of whether such testimony is admissible at all, and, if so, for what classes of writings, he concludes that the various jurisdictions fall into the following categories, based on a summation of Sections § 2008 and § 2016 of his treatise by the attorney for the petitioner:

Jurisdiction	Type of Writing and Case	Admissible or Not Admissible
United States: Federal	Appearance bond in criminal case	Admissible
Twenty-Nine States: California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New	Any writing, case	Yes, provided document is proved to be genuine to the satisfaction of court

York, North Carolina, Oregon, Rhode Island, Tennessee, Texas, West Virginia, and Wisconsin.	
Three states: Massachusetts, Pennsylvania and Vermont	Preliminary corroboration required before expert and jury are allowed to compare writings.
Four states: North Dakota, South Carolina, South Dakota, and Utah	In these states, the use of such testimony is employed on a case by case basis.
Ohio	Here no distinction is taken between the expert's and jury's use of specimens, and the same rule is laid down for both.

It is clear from an analysis of Professor Wigmore's treatment of the subject that the State of Ohio has been, and is now, so out of step with the times by its application of the law in this area of the field of evidence, as to deprive appellant-petitioner Ruth Biddle of her property without due process of law.

Further, with the pendency of the *Cochran* case now before this Court, the court now has the opportunity to establish a modern and sensible approach to this most important aspect of the law of evidence.

Petitioner-appellant Ruth Biddle contends that, in view of the important question posed by her own case and that of the *Cochran* case, showing the uneven application of the laws of evidence in the two states, depending on whether a civil or criminal matter is involved, sets the stage for this Court to grant jurisdiction to her appeal. Further, she contends that the filing of the *Cochran* case in this Court is a circumstance of so substantial and controlling an effect, that she is entitled to a rehearing of the judgment of this Court denying her appeal. *Sanitary Refrigerator Company v. Winters*, 280 U.S. 30, 34, footnote 1, 50 S. Ct. 9, 10 (1929);

Massey v. United States, 291 U.S. 608, 54 S. Ct. 532 (1933). For only by granting her appeal can this Court exercise proper supervisory powers over state courts and ensure an even and fair application of the laws of evidence in those courts. Further, petitioner-appellant contends that the above matters are so substantial that she should be given an opportunity to present them to this Court at her rehearing.

CONCLUSION

For the foregoing reasons, the petitioner respectfully urges that a rehearing be granted, that upon further consideration that the order of October 14, 1968, denying the appeal, be revoked, and that the appeal be granted or that a writ of certiorari issue.

DOWNEY RICE
Attorney for Petitioner

I, Downey Rice, of counsel for the petitioner, Ruth Biddle, do hereby certify that the foregoing petition for rehearing of this cause is presented in good faith and not for the purpose of delay. Further, I hereby certify that the petition for rehearing is restricted to the grounds above specified.

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